

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

MARION DIAGNOSTIC CENTER, LLC, et
al.,

Plaintiffs,

v.

BECTON, DICKINSON, AND CO., et al.,

Defendants.

Case No. 3:18-cv-01059

Judge Nancy J. Rosenstengel

**UNOPPOSED MOTION TO EXTEND TIME FOR PLAINTIFFS TO FILE
A SECOND AMENDED COMPLAINT AND
TO REQUEST ENTRY OF STIPULATED BRIEFING SCHEDULE**

Plaintiffs Marion Diagnostic Center LLC, Marion HealthCare, LLC, and Andron Medical Associates, by their undersigned attorneys, respectfully request that this Court grant this unopposed motion to extend the deadline for Plaintiffs to file an amended complaint and for the parties to brief any forthcoming motions to dismiss that complaint. In support of their request, Plaintiffs state as follows:

1. On November 30, 2018, this Court issued a final judgment dismissing Plaintiffs' operative complaint with prejudice. Dkt. 118. On December 27, 2018, Plaintiffs filed a timely notice of appeal from the Court's judgment. Dkt. 122. In a judgment dated March 5, 2020, the United States Court of Appeals for the Seventh Circuit vacated this Court's November 30, 2018 final judgment and remanded the case to this Court for further proceedings in accordance with the Seventh Circuit's opinion. Dkt. 130-2. On March 27, 2020, the Court of Appeals issued its mandate to this Court. Dkt. 130.

2. The Seventh Circuit's opinion stated that the Plaintiffs "should have the

opportunity” to file an amended complaint in support of their claims against Defendants. Dkt. 130-2 (certified opinion) at 16. Accordingly, this Court entered a text order on April 6, 2020 directing Plaintiffs to file a second amended complaint by June 5, 2020. Dkt. 144.

3. On May 19, 2020, Plaintiffs filed a motion with all Defendants’ consent to extend the time to file a second amended complaint to July 31, 2020, and to set a briefing schedule agreed to by the parties for Defendants’ anticipated motions to dismiss. Dkt. 145. On May 20, 2020, the Court granted the consent motion. Dkt. 147.

4. Since the Court’s order, the parties have further met and conferred about an appropriate schedule for Plaintiffs’ second amended complaint and Defendants’ anticipated motions to dismiss. Given the disruption caused by the ongoing COVID-19 crisis and the press of other matters, more time has been required than previously anticipated for Plaintiffs to conduct the factual investigation necessary to prepare their second amended complaint. Plaintiffs accordingly request, and (as described below) Defendants do not oppose, a brief three-week further extension for the filing of Plaintiffs’ second amended complaint and any potential motions to dismiss by Defendants. Plaintiffs will not seek a further extension of time to file their second amended complaint in this matter.

5. Plaintiffs thus respectfully request that the Court so-order the following schedule:
- **August 21, 2020:** Plaintiffs file their second amended complaint.
 - **November 6, 2020:** Defendants file their answers or motions to dismiss the second amended complaint.
 - **January 8, 2021:** Plaintiffs file their briefs in opposition to any motions to dismiss the second amended complaint.
 - **February 5, 2021:** Defendants file replies in support of any motions to dismiss to the extent such replies are permitted by Local Rule 7.1(c).

6. The parties agree that this motion shall not constitute waiver of any jurisdictional defenses that may be available under Rule 12 of the Federal Rules of Civil Procedure, any affirmative defenses under Rule 8 of the Federal Rules of Civil Procedure, or any other statutory or common law defenses that may be available to Defendants. The parties further agree that this motion shall not constitute agreement as to whether reply briefs are permitted under the Local Rules in support of any forthcoming motions to dismiss.

7. This is the second request by any party for an extension of time either for the Plaintiffs to file their second amended complaint or for the parties to brief any forthcoming motion to dismiss that complaint. This motion is not made for purposes of delay, but to allow Plaintiffs adequate time to prepare a second amended complaint and for the parties to adequately brief the complex factual and legal issues that will likely be raised in Defendants' anticipated motions to dismiss.

8. All Plaintiffs consent to this motion. Plaintiffs have also consulted with all Defendants, who state that they do not oppose Plaintiffs' request on the conditions that Plaintiffs do not request a further extension of time to file their second amended complaint and that Defendants likewise receive an additional three weeks to answer or move to dismiss that complaint. Plaintiffs agree to those conditions, which are reflected in the proposed schedule described in paragraph 5, above.

9. A draft order will be submitted in a format compatible with Microsoft Word to NJRpd@ilsd.uscourts.gov.

Dated: July 27, 2020
Chicago, Illinois

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing Unopposed Motion to Extend Time for Plaintiffs to File a Second Amended Complaint and to Request Entry of the Stipulated Briefing Schedule to be served on all counsel of record by filing it through the Court's CM/ECF system.

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